



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,292	08/24/2000	Linda M Smith	254070-2	3365

36614 7590 10/01/2003

MANATT PHELPS AND PHILLIPS
ROBERT D. BECKER
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CA 94304

EXAMINER

YOUNG, JOHN L

ART UNIT	PAPER NUMBER
----------	--------------

3622

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/645,292

Applicant(s)
Smith et al.

Examiner
John Young

Art Unit
3622



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 16, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29, 31, and 32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29, 31, and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

[Handwritten signature]
9-28-03

Art Unit: 3622

FINAL REJECTION

(Paper#8)

STATUS

1. Claim 30 canceled by Applicant.
2. Claims 1-29 and 31-32 are pending.

DRAWINGS

3. This application has been filed with drawings that are acceptable for examination and publication purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

ORIGINAL CLAIM REJECTIONS — 35 U.S.C. §103(a)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Shaw 6,199,106 (03/06/2001) [US f/d: 9/14/1998] (herein referred to as "Shaw").

Art Unit: 3622

As per claim 1, Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document) shows elements that suggest: “A computer-implemented method for targeting marketing content to an online user, each content having an associated target profile, comprising the steps of: collecting data describing the user in a user profile, the data including a photographic likeness of the user; comparing the user profile, including information derived from the user’s photographic likeness, to the target profile associated with each content; and presenting the user with content based on the comparison.”

Shaw lacks an explicit recitation of “including a photographic likeness of the user; comparing the user profile, including information derived from the user’s photographic likeness. . . .” even though Shaw (col. 1, ll. 21-27; col. 2, ll. 38-55; and col. 18, ll. 50-60) suggests same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Shaw (col. 1, ll. 21-27; col. 2, ll. 38-55; and col. 18, ll. 50-60) would have been selected in accordance with “including a photographic likeness of the user; comparing the user profile, including information derived from the user’s photographic likeness. . . .” because such selection would have provided means which “*Allows users to view advertisements while receiving, composing, and managing personal electronic communications.*” (see Shaw (col. 2, ll. 5-10)).

Art Unit: 3622

As per dependent claims 2-14, Shaw shows the method of claim 1 and subsequent base claims depending from claim 1.

Shaw lacks explicit recitation of the elements and limitations of claims 2-14, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 2-14 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 2-14, because such selection would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)).

Independent claim 15 is rejected for substantially the same reasons as independent claim 1.

As per dependent claims 16-20, Shaw shows the system of claim 15 and subsequent base claims depending from claim 15.

Art Unit: 3622

Shaw lacks explicit recitation of the elements and limitations of claims 16-20, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 16-20 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 16-20, because such selection would have provided means which *“Allows users to view advertisements while receiving, composing, and managing personal electronic communications.”* (see Shaw (col. 2, ll. 5-10)).

As per claim 21, Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 5; FIG. 6; FIG. 7; FIG. 9; FIG. 10; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) shows elements that suggest: “A method for targeting marketing content to a user having an associated user profile, each targeted content having an associated target profile defined by market segmentation variables, comprising the steps of: assigning metrics to data elements in the user profile, each metric representing either an

Art Unit: 3622

incremental or decremental change in a market segmentation variable, and including a confidence factor that decays over time; calculating a user index by applying the assigned metrics to the market segmentation variables; comparing the user index to the target profile associated with each content; and presenting the user with content based on the step of comparing.”

Shaw lacks an explicit recitation of “an index. . . .” even though Shaw (col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67) suggests same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the “*directory*” disclosure of Shaw (col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67) would have been selected in accordance with “an index. . . .” because such selection would have provided means which “*Allows users to view advertisements while receiving, composing, and managing personal electronic communications.*” (see Shaw (col. 2, ll. 5-10)).

As per dependent claims 22-26, Shaw shows the method of claim 21 and subsequent base claims depending from claim 21.

Shaw lacks explicit recitation of the elements and limitations of claims 22-26, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG.

Art Unit: 3622

11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 22-26 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 22-26, because such selection would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)).

NEW CLAIM REJECTIONS — 35 U.S.C. §103(a)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 27-29 & 31-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Shaw 6,199,106 (03/06/2001) [US f/d: 9/14/1998] (herein referred to as "Shaw").

As per claim 27, Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) discloses: *"Electronic mail (or 'e-mail') is becoming a popular way or*

Art Unit: 3622

people to communicate. Using e-mail, a person can send messages and other information (such as pictures, sound recordings . . . etc. that are in digital form) electronically to other e-mail users.” The Examiner interprets the above disclosure as showing “an associated user profile including a photographic likeness of the user . . . the associated user’s photographic likeness. . . .”

Shaw lacks an explicit recitation of “an associated user profile including a photographic likeness of the user . . . the associated user’s photographic likeness. . . .” even though Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) shows the same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) would have been selected in accordance with “an associated user profile including a photographic likeness of the user . . . the associated user’s photographic likeness. . . .” because such selection would have provided means which “*Allows users to view advertisements while receiving, composing, and managing personal electronic communications.*” (see Shaw (col. 2, ll. 5-10)).

Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) shows elements that suggest: “A method for targeting marketing content to an online user having an

Art Unit: 3622

associated target profile including at least one market segmentation variable and each online user having an associated user profile including a plurality of data elements, comprising the steps of: collecting data describing the user in the user profile, the data including responses to context-sensitive questions; comparing the user profile, including information derived from the context-sensitive questions, to the target profile associated with each content; and presenting the user with content based on the comparison.”

Shaw lacks an explicit recitation of “context-sensitive questions. . . .” even though Shaw (FIG. 7; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67) suggests same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Shaw (FIG. 7; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67) would have been selected in accordance with “context-sensitive questions. . . .” because such selection would have provided means which “*Allows users to view advertisements while receiving, composing, and managing personal electronic communications.*” (see Shaw (col. 2, ll. 5-10)).

As per dependent claims 28-29 & 31-32, Shaw shows the method of claim 27 and subsequent base claims depending from claim 27.

Art Unit: 3622

Shaw lacks explicit recitation of the elements and limitations of claims 28-29 & 31-32, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 28-29 & 31-32 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 28-29 & 31-32, because such selection would have provided means which *“Allows users to view advertisements while receiving, composing, and managing personal electronic communications.”* (see Shaw (col. 2, ll. 5-10)).

RESPONSE TO ARGUMENTS

6. Applicant's arguments (Amendment A, paper#6, filed 07/16/2003) have been fully considered but they are not persuasive for the following reasons:

(NOTE: As per claims 2-14, 16-20, 22-26, 28-29, and 31-32, Applicant's response fails to seasonably challenge the Official Notice evidence of the prior Office Action.

It was well settled that “If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be

Art Unit: 3622

admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, Applicant is charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made.” (See MPEP 2144.03).

In this case, Applicant’s response (Amendment A, paper#6, filed 07/16/2003) is silent as to a rebuttal of the Official Notice evidence presented in the prior Office Action (e.g., there is no demand for references in support of the Official Notice evidence); therefore, said Official Notice evidence is deemed admitted, and no further references are required in support of said Official Notice evidence.

In response to Applicant’s arguments (Amendment C, paper#6, p. 1) which asserts that “Shaw *et al.* neither discloses nor suggest including a photographic likeness of the user; comparing the user profile, including information derived from the user’s likeness. . . .”; it is well settled in the law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. (See *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (CAFC 1989)). Furthermore, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned

Art Unit: 3622

only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the Shaw reference in conjunction with the knowledge of one of ordinary skill in the art either teaches and/or suggests all of the elements and limitations of the instant invention. “‘The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01).

In response to Applicant's arguments (Amendment C, paper#6, p. 2) which asserts that the Shaw reference teaches “away from making a selection of the user's image. . . .”, it is well settled in the law that “Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments.” (See *In re Susi*, 169 USPQ 423 (CCPA 1971).

In response to Applicant's arguments (Amendment C, paper#6, p. 2) which asserts that “the Examiner has used impermissible hindsight gained on reading the Applicants' invention. . . .”, it must be recognized that any judgment on obviousness is in

Art Unit: 3622

a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the Shaw reference in conjunction with the knowledge of one of ordinary skill in the art either teach and/or suggest all of the elements and limitations of the instant invention. “The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01).

In response to Applicant’s arguments (Amendment C, paper#6, p. 2) which asserts that “There is no suggestion that would have motivated one of ordinary skill in the art to perform the steps of assigning metrics to data elements in the user profile. . . .”, it is well settled that “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” (See MPEP 707.02(j)).

Art Unit: 3622

Also, it is well settled that in order to establish motivation to modify or combine references, “it is not necessary that a reference actually suggest changes or possible improvements which Applicant made.” (See *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). In other words the rationale for motivation to modify or combine references does not have to suggest the invention as recited in the claim.

Also, it is well settled in the law that “‘There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.’ *In re Ruffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). . . .” (See MPEP 2143.01). Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the Shaw reference in conjunction with the knowledge of one of ordinary skill in the art either teach or suggest all of the elements and limitations of the instant invention. “‘The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01).

In the prior Office Action obviousness rejections, the Examiner meets the requirements of the motivation test for combining the prior art references by quoting from the reference cogent reasons (i.e., motivation) to combine the teachings; furthermore

Art Unit: 3622

the Examiner identifies how the references either teach or suggest the elements of the claims of the instant invention. Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the teachings of the references combined with the knowledge of one of ordinary skill in the art either teaches or suggests all of the elements and limitations of the instant invention. Therefore, based upon the above considerations, *prima facie* obviousness is established in the prior Office Action based upon a proper showing of motivation to combine the prior art references to come up with Applicant's invention.

ACTION MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3622

CONCLUSION

7. Any response to this action should be mailed to:

Commissioner for Patents
AF
P. O. Box 1450
Alexandria, VA 22313-1450

Any response to this action may be sent via facsimile to either:

(703) 746-7239 or (703) 872-9314 (for formal communications EXPEDITED PROCEDURE)

or (703) 746-7239 (for formal communications marked AFTER-FINAL) or

(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

Hand delivered responses may be brought to:

Seventh floor Receptionist
Crystal Park V
2451 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

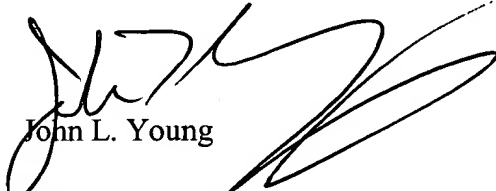
Serial Number: 09/645,292

(Smith et al.)

17

Art Unit: 3622

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.


John L. Young
Patent Examiner

September 28, 2003